IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 273 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

NAYANABEN MANSUKHLAL RAICHURA - Respondent(s)

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Appearance :
MR MANISH R BHATT for Petitioner No(s).: 1.

MR SN DIVATIA for Respondent No(s).: 1.
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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 13/06/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1.The Income Tax Appellate Tribunal, Ahmedabad

Bench “C” has referred the following question under section 256(2) of the Income Tax Act, 1961 (the Act) at the instance of the C.I.T.

> “Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.29,80,220/- under Section 69-A of the Income Tax Act?”

2. Though the question is referred as directed by this Court, it is not necessary to answer the question on merits as it is a question of fact only. As laid down by the Apex Court in case of Commissioner of Income Tax, West Bengal II v. Smt.Anusuya Devi, [1968] 68 ITR 750, “*The High Court may only answer a question referred to it by the Appellate Tribunal: the High Court is however not bound to answer a question merely because it is raised and referred. It is well settled that the High Court may decline to answer a question of fact or a question of law which is purely academic or has no bearing on the dispute between the parties or though referred by the Tribunal does not arise out of its order. The High Court may also decline to answer a question arising out of the order of the*

Tribunal, if it is unnecessary or irrelevant or is not calculated to dispose of the real issue between the taxpayer and the department. There is also no ground for restricting that power when by an erroneous order the High Court has directed the Tribunal to state a case on a question which does not arise out of the order of the Tribunal. At the hearing of a reference pursuant to an order calling upon the Tribunal to state a case, the High Court is not bound to answer the question without considering whether it arises out of the order of the Tribunal, whether it is a question of law, or whether it is academic, unnecessary or irrelevant". This position has been reiterated by the Apex Court in case of Lakshmiratan Cotton Mills Co. Ltd. v. Commissioner of Income Tax, U.P. [1969] 73 ITR 634 and since then, has been consistently followed and applied by various High Courts.

3. As can be seen from the impugned order of Tribunal, the Tribunal has recorded findings of fact based upon appreciation of evidence on record. In these circumstances, the reference is declined to be answered and stands disposed of accordingly.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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